

1 SILVANO B. MARCHESI (SBN 42965)  
County Counsel  
2 JANET L. HOLMES (SBN 107639)  
Deputy County Counsel  
3 COUNTY OF CONTRA COSTA  
651 Pine Street, 9th Floor  
4 Martinez, California 94553  
Telephone: (925) 335-1800  
5 Facsimile: (925) 335-1866  
email: jholm@cc.cccounty.us

6 Attorneys for Defendants  
7 COUNTY OF CONTRA COSTA;  
SHERIFF WARREN RUPF  
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9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12

13 JAN MAGNUSSEN,  
14  
15 Plaintiff

16 v.

17 COUNTY OF CONTRA COSTA;  
DEPUTY SHERIFF JUSTIN CHURCH,  
18 INDIVIDUALLY AND IN HIS  
OFFICIAL CAPACITY AS A DEPUTY  
19 SHERIFF FOR THE COUNTY OF  
CONTRA COSTA; WARREN RUPF,  
20 INDIVIDUALLY AND IN HIS  
OFFICIAL CAPACITY AS SHERIFF  
21 FOR THE COUNTY OF CONTRA  
COSTA; AND DOES ONE THROUGH  
22 100,

23 Defendants.  
24

No. C 07 4307 EDL

ANSWER TO COMPLAINT AND  
DEMAND FOR JURY TRIAL BY COUNTY  
OF CONTRA COSTA AND WARREN  
RUPF  
25

26 Defendants County of Contra Costa and Warren Rupf (hereinafter "Defendants"), in  
27 response to plaintiff's unverified complaint, admit, deny and allege as follows:  
28

ANSWER

1. Responding to the first numbered paragraph of plaintiff's complaint, Defendants admit, based on the allegations of the complaint, that jurisdiction and venue are proper in this court..
2. Responding to the second numbered paragraph of plaintiff's complaint, Defendants deny the allegations based on lack of information and belief.
3. Responding to the third numbered paragraph of plaintiff's complaint, Defendants deny the allegations based on lack of information and belief.
4. Responding to the fourth numbered paragraph of plaintiff's complaint, Defendants admit the allegations.
5. Responding to the fifth numbered paragraph of plaintiff's complaint, Defendants admit the allegations of the first sentence and deny the allegations of the second sentence based on lack of information and belief.
6. Responding to the sixth numbered paragraph of plaintiff's complaint, Defendants admit the allegations of the first sentence and deny the allegations fo the second sentence based on lack of information and belief.
7. Responding to the seventh numbered paragraph of plaintiff's complaint, Defendants deny the allegations based on lack of information and belief.
8. Responding to the eighth numbered paragraph of plaintiff's complaint, Defendants deny the allegations of the first and second sentence, based on lack of information and belief. Responding to the eighth second numbered paragraph of plaintiff's complaint, Defendants deny the allegations of the third and fourth sentence. Defendants deny the allegations of the fifth sentence, based on lack of information and belief.
9. Responding to the ninth numbered paragraph of plaintiff's complaint, Defendants deny the allegations.
10. Responding to the tenth numbered paragraph of plaintiff's complaint, Defendants admit the allegations of the first sentence and deny the remaining allegations.

- 1 11. Responding to the eleventh numbered paragraph of plaintiff's complaint, Defendants  
2 admit the allegations of the first sentence and deny the remaining allegations, based on  
3 lack of information and belief.
- 4 12. Responding to the twelfth numbered paragraph of plaintiff's complaint, Defendants  
5 deny the allegations.
- 6 13. Responding to the thirteenth numbered paragraph of plaintiff's complaint, Defendants  
7 deny the allegations.
- 8 14. Responding to fourteenth numbered paragraph of plaintiff's complaint, Defendants  
9 deny the allegations.
- 10 15. Responding to the fifteenth numbered paragraph of plaintiff's complaint, Defendants  
11 deny the allegations.
- 12 16. Responding to the sixteenth numbered paragraph of plaintiff's complaint, Defendants  
13 deny the allegations.
- 14 17. Responding to the seventeenth numbered paragraph of plaintiff's complaint, Defendants  
15 deny the allegations.
- 16 18. Responding to the eighteenth numbered paragraph of plaintiff's complaint, Defendants  
17 deny the allegations.
- 18 19. Responding to the nineteenth numbered paragraph of plaintiff's complaint, Defendants  
19 deny the allegations.

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21 **AFFIRMATIVE DEFENSES**

- 22 20. AS A FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said  
23 Complaint, and each and every cause of action set forth therein, Defendants allege that  
24 the allegations fail to state any claims upon which relief can be granted.
- 25 21. AS A SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said  
26 Complaint, and each and every cause of action set forth therein, Defendants allege that  
27 the County and its employees are protected by the doctrine of qualified immunity.  
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- 1 22. AS A THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said  
2 Complaint, and each and every cause of action set forth therein, Defendants allege that  
3 plaintiff's claims are barred by the doctrines of waiver, estoppel and laches.
- 4 23. AS A FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said  
5 Complaint, and each and every cause of action set forth therein, Defendants allege that  
6 at all times herein mentioned, all actions taken by Defendants and County employees  
7 were reasonable under the circumstances and taken under a good faith belief that the  
8 actions were not unlawful and Defendants and County employees are therefore immune  
9 under the Good Faith Immunity Doctrine.
- 10 24. AS A FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said  
11 Complaint, and each and every cause of action set forth therein, Defendants allege that  
12 at all times herein mentioned Defendant County and its employees are privileged and  
13 immune for the exercise of reasonable actions to effect a lawful detention and/or arrest  
14 based on probable cause and attempted service of a valid temporary restraining order..
- 15 25. AS A SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said  
16 Complaint, and each and every cause of action set forth therein, Defendants allege that  
17 the County is immune from liability, and cannot be held liable for any injury that may  
18 have been sustained by plaintiff, which injury Defendants specifically deny, and that  
19 Defendants and County employees were at all relevant times performing duties in an  
20 objectively reasonable manner, within lawful responsibilities, and are therefore immune  
21 from suit.
- 22 26. AS A SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said  
23 Complaint, and each and every cause of action set forth therein, Defendants allege that  
24 each claim and cause of action is barred by the failure of plaintiff to exhaust  
25 administrative remedies.
- 26 27. AS A EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said  
27 Complaint, and each and every cause of action set forth therein, Defendants allege that  
28 in the event that the trier of fact finds any liability on the part of these answering

1 Defendants, which liability is herein denied, these answering Defendants will seek the  
2 benefit of several liability for non-economic damages as provided in Civil Code  
3 sections 1431 through and including 1431.5.

4 28. AS A NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said  
5 Complaint, and each and every cause of action set forth therein, public entity  
6 defendant County alleges that it is not liable for punitive damages pursuant to  
7 Government Code section 818.

8 29. AS A TENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said  
9 Complaint, and each and every cause of action set forth therein, Defendants allege  
10 that as to any state law claims, each cause of action is barred under the provisions of  
11 Government Code section 910, et seq., and Code of Civil Procedure section 313 for  
12 failure to comply with requirements of filing a timely and sufficient tort claim and  
13 failure to set forth in any tort claim filed the facts and theories that are set forth in the  
14 pending Complaint.

15 30. AS AN ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to  
16 said Complaint, and each and every cause of action set forth therein, Defendants  
17 allege that the negligence of others, if any, was greater than the negligence of  
18 Defendants, if in fact any defendant was negligent, and the liability, if any, of said  
19 answering Defendants should be diminished in direct proportion to the fault, if any,  
20 attributable to others as compared with that of said answering Defendants (or any of  
21 them).

22 31. AS A TWELFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said  
23 Complaint, and each and every cause of action set forth therein, the public entity  
24 defendant alleges that it is immune pursuant to Government Code sections 815 and  
25 815.2.

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- 1 32. AS A THIRTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to  
2 said Complaint, and each and every cause of action set forth therein, the public entity  
3 defendant alleges that it is immune pursuant to Government Code section 815.6 for  
4 exercise of mandatory duty when exercised reasonable diligence in discharging duty.
- 5 33. AS A FOURTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to  
6 said Complaint, and each and every cause of action set forth therein, the public entity  
7 defendant alleges that it is immune pursuant to Government Code section 818.2 for  
8 adopting or failing to adopt an enactment or by failing to enforce any law.
- 9 34. AS A FIFTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to  
10 said Complaint, and each and every cause of action set forth therein, the public entity  
11 defendant alleges that it is immune pursuant to Government Code section 818.8 for  
12 misrepresentations.
- 13 35. AS A SIXTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to  
14 said Complaint, and each and every cause of action set forth therein, Defendants  
15 allege that they are immune pursuant to Government Code sections 820.2 and 815.2  
16 for exercise of discretion.
- 17 36. AS A SEVENTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE  
18 to said Complaint, and each and every cause of action set forth therein, Defendants  
19 allege that they are immune pursuant to Government Code sections 820.4 and 815.2  
20 for the execution or enforcement of any law.
- 21 37. AS A EIGHTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to  
22 said Complaint, and each and every cause of action set forth therein, Defendants  
23 allege that they are not liable to the plaintiff pursuant to Government Code sections  
24 820.6 and 815.2.
- 25 38. AS A NINETEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to  
26 said Complaint, and each and every cause of action set forth therein, Defendants  
27 allege that any and all culpable acts, omissions, or conduct, if any, which allegedly  
28 caused the injuries and damages sought in the Complaint on file in this action, were

caused by third parties and therefore answering Defendants are not liable to the plaintiff pursuant to Government Code sections 820.8 and 815.2.

39. AS A TWENTIETH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said Complaint, and each and every cause of action set forth therein, Defendants allege that they are not liable to the plaintiff pursuant to Government Code section 821.

40. AS A TWENTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said Complaint, and each and every cause of action set forth therein, Defendants allege that they are not liable to the plaintiff pursuant to Government Code sections 815.2 and 821.6.

41. AS A TWENTY-SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said Complaint, and each and every cause of action set forth therein, Defendants allege that they are not liable to the plaintiff for execution of judicial or quasi-judicial acts.

42. AS A TWENTY-THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said Complaint, and each and every cause of action set forth therein, Defendants allege that they are is not liable for injuries caused by any misrepresentations to the plaintiff pursuant to Government Code section 822.2 of the California Government Code.

43. AS A TWENTY-FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said Complaint, and each and every cause of action set forth therein, Defendants allege that the County and its employees are privileged and immune for their acts taken pursuant to the provisions of the California Penal Code.

44. AS A TWENTY-FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said Complaint, and each and every cause of action set forth therein, Defendants allege that they are immune pursuant to Civil Code section 47(a) and Government Code section 815.2

1 45. AS A TWENTY-SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE  
2 to said Complaint, and each and every cause of action set forth therein, Defendants  
3 allege that the County and its employees are immune from liability pursuant to the  
4 provisions of sections 810 through 895.8 of the California Government Code.

5 46. AS A TWENTY-SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE  
6 DEFENSE to said Complaint, and each and every cause of action set forth therein,  
7 Defendants allege that plaintiffs action is barred by the provisions of Code of Civil  
8 Procedure sections 340(3), 342, and every other limitations period applicable to each  
9 and every cause of action alleged in the complaint.

10 47. AS A TWENTY-EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE  
11 DEFENSE to said Complaint, and each and every cause of action set forth therein,  
12 Defendants allege that any and all of the acts or omissions alleged against them in the  
13 complaint are the acts and omissions of agencies and officers of the State of  
14 California acting in their official capacities, and that Defendants are therefore immune  
15 from suit under the 11th Amendment to the United States Constitution.

16 48. AS A TWENTY-NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE  
17 to said Complaint, and each and every cause of action set forth therein, individually  
18 named defendants allege that, in conducting the activities giving rise to plaintiff's  
19 Complaint, each of them acted without malice and oppression, and without intent to  
20 harm plaintiff and without conscious disregard for plaintiff's rights or safety, and  
21 therefore punitive damages can not be awarded against each or any of Defendants.

22  
23 WHEREFORE, Defendants pray for the following relief:

- 24 a. That plaintiff take nothing by his Complaint and that Defendants be dismissed;  
25 b. That Defendants be awarded costs;  
26 c. That Defendants be awarded attorneys fees; and  
27 d. For such other relief that the court deems just and proper.  
28



JURY REQUEST

Defendants request a trial by jury.

DATED: September 12, 2007

SILVANO B. MARCHESI  
COUNTY COUNSEL

By: \_\_\_\_\_  
JANET L. HOLMES  
Deputy County Counsel  
Attorneys for Defendants  
COUNTY OF CONTRA COSTA  
AND SHERIFF WARREN RUPF